

SAMPLE

**MEMORANDUM OF UNDERSTANDING
REGARDING
FUNDING OF PROJECTS FOR EXPANSION OF EXISTING BROADBAND
NETWORKS**

This Memorandum of Understanding Regarding Funding for Pilot Projects for Broadband Expansion (“**Agreement**”) is made by and between the Department of Housing and Community Development (“**DHCD**”), a principal department of the State of Maryland (“**State**”) and _____ County (the “**County**”). DHCD and the County are each a “**Party**,” and may be collectively referred to as the “**Parties**.”

WHEREAS, there is a deficit of broadband resources serving rural residents and businesses in the State; and

WHEREAS, DHCD supports the mission of the State and, in particular, the Governor’s Office of Rural Broadband (the “**Office**”), to deliver broadband internet to rural communities in Maryland experiencing such a deficit; and

WHEREAS, it is the goal of DHCD, in support of the Office, to aid counties experiencing such a deficit by supporting these counties in implementing solutions to the problem of delivering broadband to unserved rural residents and businesses; and

WHEREAS, the County seeks funding support for development of two pilot projects for extending existing broadband service into Unserved Rural Areas (“**Projects**”); and

WHEREAS, the State has allocated funding to DHCD for the purpose of supporting the development of broadband to serve presently-underserved rural areas; and

WHEREAS, DHCD has agreed to aid the County by providing funding where necessary to support the Projects; and

NOW, THEREFORE, in consideration of the mutual commitments made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals

The Recitals set forth above are hereby incorporated and made a part of this Agreement.

2. Term

The term of this Agreement shall begin after all appropriate Party approvals have been obtained and the Agreement has been executed by all Parties, and will terminate on December 31, 2020, unless earlier terminated pursuant to Section 5 hereof.

3. Definitions

3.1 “County Match” means the funds committed to the Projects by the County and, if applicable, the Internet Service Provider partner, to match the funding committed by DHCD to the Projects under this Agreement.

3.2 “ISP” means the internet service provider partnering with the County for the Projects, _____.
_____.

3.3 “Minimum Network Requirements” means a minimum internet connectivity of 25 Mbps down and 3 Mbps up with a maximum latency of 50 milliseconds measured at the served subscribers’ location.

3.4 “Projects” means the County’s pilot projects to extend broadband services into Unserved Rural Areas, as described in detail in the County’s Responses to the RFI, attached hereto as Exhibits ____ and ____, and identified therein as the _____Project and _____Project.

3.5 “Project Areas” means the geographic area to be served with internet connectivity as a result of the Projects, as identified in Exhibits _____ and _____. The Project Areas must be located within an Unserved Rural Area.

3.6 “RFI” means the *Governor’s Office of Rural Broadband Request for Interest in Assistance for Broadband Expansion for Unserved Rural Areas – Pilot Projects*, published on _____.

3.7 “Unserved Rural Area” means a geographic area lacking terrestrial, fixed internet service at speeds above 25 Mbps download and 3 Mbps upload, falling within a Census Rural Area.

4. Obligations of Parties

4.1 DHCD

4.1.1 Funding. To support the Projects, DHCD commits to providing funding to the County, on a reimbursement basis, in an amount not to exceed _____ (“**Funding**”). Reimbursement funding per Project is available as follows: _____. The following conditions apply:

4.1.1.1 Funding shall only be provided for actual, eligible Project costs;

4.1.1.2 Funding shall not exceed fifty percent (50%) of the actual Project cost of each Project;

4.1.1.3 Funding shall only be provided to the extent that the County Match is provided, as described in Section 4.2.2.1.3 below.

4.1.1.4 Eligible Project costs are costs relating to the capital assets required to provide service, meeting Minimum Network Requirements, to end user subscribers within the Project Areas.

4.1.2 Invoicing and reimbursement.

4.1.2.1 The County shall submit invoices for reimbursement of eligible Project costs, with supporting documentation to DHCD, with a courtesy copy to the Office, for reimbursement of Project costs no later than thirty (30) days after County payment of Project costs. Invoices must include the following information:

4.1.2.1.1 Date of invoice;

4.1.2.1.2 Date and description of expense or service for which reimbursement is requested;

4.1.2.1.3 Identification of whether the incurred costs are for the _____ or _____ Project.

4.1.2.1.4 Cumulative Project cost to-date for that Project;

4.1.2.1.5 Cumulative DHCD reimbursements to-date for that Project;

4.1.2.1.6 Percentage of overall Project cost paid by DHCD to-date.

4.1.2.2 In conjunction with each reimbursement request submitted to DHCD, the County shall provide a report to the Office setting forth the number of unserved homes in the past, the number of initial subscribers since the expansion (if any), and the number of fiber miles placed.

4.1.2.3 DHCD or the Office may require the submission of additional supporting documentation.

4.1.2.4 Reimbursements may be made on paid or unpaid invoices.

4.1.2.5 DHCD will make reimbursements within sixty (60) days after approval of an invoice submitted pursuant to 4.1.2.1.

4.1.3 Discretion. DHCD, in its sole discretion, may approve or deny reimbursement requests made pursuant to Sections 4.1.1. In reviewing, approving, and processing funding requests, DHCD may consult with the Office.

4.2 The County

4.2.1 Eligibility for Funding.

4.2.1.1 The County is a grantee of funds from DHCD and this Agreement constitutes a grant agreement.

4.2.1.2 The County must fully execute each Project for funding to be awarded. In the event that the County defaults on this obligation, funding may be recalled by DHCD as to any uncompleted Project.

4.2.2 Project

4.2.2.1 The Projects must meet the following criteria for funding to be provided pursuant Section 4.1.

4.2.2.1.1 The Projects must serve an Unserved Rural Area.

4.2.2.1.2 The Projects must meet Minimum Network Requirements.

4.2.2.1.3 A County Match in the amount of One Dollar (\$1.00) for every One Dollar (\$1.00) of funding provided by DHCD is required.

4.2.2.1.4 The Projects will conform in all material respects with the County's responses to the RFI, attached hereto as Exhibit _____ and _____. The scope of these Exhibits may be modified with approval of DHCD, in consultation with the Office.

4.2.2.2 The Projects will be owned by the County or the ISP. The County is responsible for overall funding and implementation of the Projects.

4.2.2.3 The County will seek the assistance and advice of the Office in executing the Projects. The County will accept the Office's advice and suggestions in good faith.

5. Early Termination

5.1 If a Party fails to fulfill any or all of its obligations under this Agreement properly and on time, or otherwise violates any provision of this Agreement, any non-defaulting Party may terminate this Agreement by giving thirty (30) days prior written notice of such default to each other Party. The non-defaulting Parties shall allow thirty (30) days for a defaulting Party to cure said default. If the default is not cured within the thirty (30) day cure period, a non-defaulting Party may terminate this Agreement without further notice. The thirty (30) day notice shall specify the acts or omissions relied upon for termination.

5.2 DHCD may terminate this Agreement for convenience upon sixty (60) days' notice to the other Parties. In the event of an early termination under this Section, the County will be reimbursed all reasonable costs incurred prior to the date of notice of termination, pursuant to Section 4.1.1.

5.3 Funding under this Agreement is subject to budget constraints and legislative approvals. If funds are not appropriated or made available to DHCD for the amounts identified in this Agreement, this Agreement shall be automatically terminated, without any action required.

6. Notices

All notices required under this Agreement shall be made in writing, delivered by first-class mail (with a courtesy copy by e-mail), and deemed received three (3) days after mailing. All notices shall be directed as follows:

If for DHCD, to:

Kenneth C. Holt
Secretary
Department of Housing and Community Development
7800 Harkins Road
Lanham, MD 20706

With courtesy e-mail to: kenneth.holt@maryland.gov

and

Kenrick Gordon
Director, Governor's Office of Rural Broadband
Department of Housing and Community Development
7800 Harkins Road
Lanham, MD 20706

With courtesy e-mail to: kenrick.gordon@maryland.gov

If for the County, to:

With courtesy e-mail to: _____

7. Liability

7.1 Each Party assumes sole responsibility for the obligations to be performed by it under this Agreement.

7.2 To the extent permitted by law, the County shall defend, indemnify, and hold harmless DHCD, the Office, and the State, from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, and proceedings of any kind whatsoever (including but not limited to reasonable attorney's and expert's fees and costs), whether or not involving a third-party claim, that are caused by, relate to, or arise from any breach of this Agreement or any direct or indirect, willful or negligent, act or omission by the

County, its officials, employees, or agents, in connection with the subject of this Agreement, unless such claims arise from or are the sole result of intentional misconduct or gross negligence of the party seeking to enforce this right to indemnification. The County's obligation to defend, indemnify, and hold harmless DHCD, the Office, and the State, shall survive the termination of this Agreement.

7.3 In any agreement for execution of the Projects with the ISP, the County shall require the ISP to defend, indemnify, and hold harmless DHCD, the Office, and the State, from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, and proceedings of any kind whatsoever (including but not limited to reasonable attorney's and expert's fees and costs), whether or not involving a third-party claim, that are caused by, relate to, or arise from any breach of this Agreement or any direct or indirect, willful or negligent, act or omission by the ISP, its officers, employees, or agents, in connection with the subject of this Agreement, unless such claims arise from or are the sole result of intentional misconduct or gross negligence of the party seeking to enforce this right to indemnification.

7.4 Nothing provided in this Agreement shall be construed as a waiver of the Tort Claims Acts and related funding provisions or the defense of governmental immunity by the Parties as to any third party.

7.5 It is hereby stipulated and agreed between the Parties that with respect to any tort claim or action arising out of any services performed under or pursuant to this Agreement, each Party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions or omissions of its own agents, officers and employees. In any action or claim arising out of any services performed under or pursuant to this Agreement, each Party shall assume the defense of itself, its own officers, agents

or employees in accordance with the Maryland Tort Claims Act, Md. Code Ann., State Gov't Art., §12-101, *et seq.* and the Maryland Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301, *et seq.*, as the case may be.

7.6 Each of the Parties shall immediately notify the other of any claim or suit made or filed against them or their subcontractors regarding any matter resulting from or relating to their obligations under this Agreement and will cooperate, assist, and consult with the other in the defense or investigation of any claim, suit, or action made or filed against any of the Parties relating to the obligations of such Party under this Agreement.

8. Records

The County will maintain accurate records of all documents relating to this Agreement, all expenses incurred under this Agreement, and all services provided to the County for which reimbursement is made under Section 4.1.1. The County shall make the records and its administrative offices, personnel, consultants, or volunteers who are involved in the implementation of this Agreement available to DHCD and the Office upon request. All such records shall be maintained for a period of three (3) years after funding is provided by DHCD or, with respect to the cash flow reserves, for three (3) years after the five (5) year period covered by the pro forma has run, or for the applicable period of limitations, whichever is longer. In cases where unresolved audit questions may require retention of some or all of said records for a longer period, the County will turn over all records that may be required to be retained beyond the three (3) year period identified herein to DHCD.

9. Compliance with Laws

Each Party to this Agreement hereby represents and warrants that it shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement.

10. Certifications

10.1 The Parties agree to not discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, familial status, marital status, national origin, ancestry, or physical or mental disability or any other characteristic forbidden as a basis for discrimination by applicable laws. The Parties agree to comply with other non-discrimination provisions of federal and State law.

10.2 The signatory for the County in this Agreement is an officer of the County and is authorized to act in connection with the matters described in this Agreement. This Agreement has been duly authorized, executed, and delivered in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the County, subject to the approval of _____ of _____ County

10.3 The Parties warrant that they shall comply with the State's policy concerning drug and alcohol free workplaces as set forth in COMAR 01.01.1989.18 and 21.11.08, and shall remain in compliance throughout the term of this Agreement.

11. Entire Agreement

This Agreement, together with any exhibits attached hereto and incorporated by reference, represents the complete, total and final understanding of the Parties and no other understanding or representations oral or written, regarding the subject matter of this Agreement shall be deemed to exist or bind the Parties at the time of the execution.

12. No Waiver

The failure to insist in any one or more instances upon a Party's strict performance of any of its obligations under this Agreement shall be limited to that particular instance, and shall not be deemed or construed as a waiver or relinquishment of the right to require and enforce the future performance of such obligations.

13. Severability

If any term, covenant, or condition of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, then that provision shall be deemed to be deleted and the remaining provisions of this Agreement shall be construed without such provision, and shall, nevertheless, remain in full force and effect as long as the essential terms of this Agreement remain valid, legal, reasonable, and enforceable.

14. Amendments

This Agreement may not be changed, altered, or modified except by written agreement executed by the Parties. Except for any specific provision of this Agreement which is amended in accordance with this Section, this Agreement remains in full force and effect after any such amendment.

15. Miscellaneous

15.1 This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland.

15.2 This Agreement shall not be assignable or transferable without the prior written consent of the Parties.

15.3 Section headings and subheadings in this Agreement are used for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

15.4 This Agreement is for the exclusive benefit of the DHCD and the County. No other person or entity shall have rights under or be deemed a beneficiary of this Agreement.

15.5 This Agreement may be executed in counterparts; all such executed counterparts shall be deemed one agreement. Signatures of the Parties, transmitted by facsimile or by electronic mail printable in tangible form to the other Party, shall be as effective as an original signature delivered by the signing Party.

16. Exhibits

The following Exhibits attached hereto are an integral part of this Agreement and are incorporated herein by reference:

Exhibit A: Response to RFI dated _____, concerning _____ Project.

Exhibit B: Response to RFI dated _____, concerning _____ Project.

Exhibit C: Award Letter for the _____ and _____ Project

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their proper and duly authorized officers, on the dates identified below.

[SIGNATURES ON FOLLOWING PAGE]

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

Date

BY: Kenneth C. Holt
Secretary

Approved as to form and legal sufficiency
this _____ day of _____, 20__:

Assistant Attorney General

_____ COUNTY

Date

BY:
ITS: